

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

TIDYMAN'S LLC d/b/a COUNTY MARKET¹

Employer

and

Case 19-RC-14005

UNITED FOOD & COMMERCIAL WORKERS
LOCAL NO. 4, affiliated with UNITED FOOD &
COMMERCIAL WORKERS INTERNATIONAL
UNION, AFL-CIO-CFC²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All meat department employees employed by the Employer at its Helena, Montana facility; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees.

¹ The name of the Employer appears as corrected at hearing.

² The name of Petitioner appears as corrected at hearing.

³ No briefs were filed.

The Employer is engaged in the operation of a retail grocery store in Helena, Montana. Petitioner requests a unit of all meat department employees. The sole issue in the hearing is the Employer's contention that the meat department manager (also known as the head meat cutter) is a statutory supervisor. The parties stipulated that a unit including all meat department employees is an appropriate unit.

The Employer has owned the store since June 24, 2000. Petitioner requested recognition on July 25, 2000, and the Employer declined to recognize. I take administrative notice that under the predecessor employer, Petitioner was certified as the collective bargaining representative of a unit of meat department employees in prior case *County Market*, 19-RC-13627 on July 1, 1998.⁴ Petitioner was unable to reach agreement on any contract with the predecessor. There are no other bargaining units in the store, and no other collective bargaining history.

Dennis Sams is the disputed meat department manager. He was hired into the position by the predecessor employer in April, 2000. The meat department employees include cutters, wrappers, and a clean-up person. Sams schedules the employees on a weekly basis. In doing so, he seeks to distribute hours evenly, and to give each employee two days off in a row. Where possible, he grants employees' requests for particular days off, but denies such requests if the result would be too few employees present. In making such decisions, he takes into account the job classification of the employee involved.

Sams also performs a number of ministerial tasks, such as ordering, paying invoices, and tracking sales and profits. He spends about 80 percent of his time working in an office which he shares with other department managers. He spends the other 20 percent performing cutting and wrapping work, on an as-needed basis.

Since June 24, Sams has hired two employees into the meat department. One such employee is Jeff Nanini, a journeyman meat cutter. Sams determined that he needed to hire a meat cutter after another employee had left the job a few weeks earlier. Sams asked that the Employer advertise in newspapers for the position. Sams received an unspecified number of applications and reviewed them. A supervisor at Super Value, a separate employer which supplies meat to the Employer, told Sams that there was a journeyman meat cutter working in a store in Cut Bank who might be interested in the job. Sams contacted that person, who was Nanini, and arranged for him to submit an application and come in for an interview. Sams alone interviewed Nanini and decided to hire him. In the process, Sams also asked the Employer's district manager, Joe Hoshek his opinion of Nanini's skills, as Sams was aware that Hoshek knew Nanini. Hoshek told Sams that Nanini was a good cutter, but there is no evidence that Hoshek instructed Sams to hire Nanini. Sams consulted the store's office manager regarding the rate of pay for a journeyman meat cutter, and set Nanini's wages at that rate.

The second employee hired by Sams was Sargena Carella, who previously worked in the store's deli department. The deli supervisor had told Sams in April that Carella was interested in working in the meat department. Later, sometime after June 24, Sams decided he needed a meat wrapper. He talked to Carella and hired her. She had prior experience at another employer, and he and she negotiated her wage.

Employer witnesses testified that Sams has authority to evaluate employees and give them wage increases, and that he has authority to discipline employees, including termination, but no occasion has

⁴ Herein, Petitioner represented to the record that in the prior case the parties stipulated to the supervisory status of the meat department manager (head meat cutter) in order to avoid a hearing on the issue.

yet arisen for Sams to either evaluate any employees or to discipline any. The bakery manager independently fired an employee who had failed to appear for work three shifts in a row.

Section 2(11) of the Act defines a "supervisor" as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Sams hired two employees, and the record establishes that he did so independently. In the process of hiring Nanini, he reviewed the applications of other candidates. It appears that he rejected them as unsatisfactory. He then sought out Nanini on the basis of a suggestion from a person employed by another employer, asked for an opinion regarding Nanini's skills from a person higher in the Employer's managerial hierarchy, independently interviewed Nanini, and decided to hire him. There is no evidence that any person in higher authority participated in the hiring decision, or instructed Sams to hire Nanini. Further, Sams decided to hire Carella into the meat department after talking to her, and he independently negotiated her wage rate with her. Thus the record establishes that Sams has authority to hire employees, and that the exercise of such authority requires the use of independent judgment. I conclude, therefore, that Sams is a supervisor within the meaning of the Act.

There are approximately 8 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED FOOD & COMMERCIAL WORKERS LOCAL NO. 4, affiliated with UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, CLC.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before September 21, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 21, 2000.

DATED at Seattle, Washington, this 7th day of September, 2000.

/s/ RAYMOND D. WILLMS

Raymond D. Willms, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

177-8540-5400
177-8520-0800